IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.661 OF 2006
IN

SUIT NO.437 OF 2006

Raymond Limited
Reg. Off. Plot No.156/H No.2,
Village Zadgaon, Ratnagiri,
Maharashtra 415 612 and
Head Off. New Hind House,
Narottam Morarji Marg,
Ballard Estate, Mumbai: 400 001. ...Plaintiff

V/s.

Raymond Pharmaceuticals Private Ltd.
B-21, SIDCO Pharmaceutical
Complex, Alathur, Dist.Thirupur
Chennai 603 110. ...Defendants

Shri.Rushabh Shah with Amit Vyas i/b Rajani & Associates for Plaintiff.
Shri.Manish Shavrashtri i/b Shantilal & Co. for Defendants.

CORAM : S.A.BOBDE, J.
DATED : 15/02/2007

ORAL JUDGEMENT:-

1. By this notice of motion the plaintiff is seeking an injunction restraining defendants from dealing in relation to the word "Raymond" or any other mark identical with or deceptively similar to the plaintiff's trademarks bearing Nos.193273 and 407166 (Exhibits A and B), so as to infringe the same.

2. The plaintiff has filed this suit for injunction to restrain the defendants from infringing their registered trade mark. There is no claim that the defendants are passing off their goods. The plaintiff's "Raymond Limited" is a company which is a successor of "Raymond Woollen Mills Limited' incorporated in the year 1925, which had conceived and adopted the use of word "Raymond" in a stylized manner for marketing its product.

3. On 27nd June, 1983, the plaintiff obtained registration for the trade mark 'Raymond' under registration No.401766 registered in Class 25 in respect of textile piece goods including shirting, suiting and saris, dress materials, blankets, shawls, satin, bed and table covers, bed spreads, bed sheets, tissues, felts, curtains, flannel, handkerchiefs, linen, cloth linings, towels, woollen piece goods etc under the Trade and Merchandise Marks Act, 1958. They also have obtained registration under Copyright Act, 1957 for the word "Raymond" written in stylized manner. In short, for the goods in question, which are broadly wearing apparel, plaintiffs have registered copyright and

registered trade mark for the word "Raymond".

4. The defendant is a company called "Raymond Pharmaceuticals Limited" and has nothing to do with wearing apparels. It uses the word "Raymond" as part of their trade name and corporate name and not as a trade mark. The defendants do not use word "Raymond" on their pharmaceuticals products like "LAC" and "Neurocare". The name "Raymond Pharmaceuticals Private Limited appears in the memorandum of association of the company and certificate incorporation dated 31st March, 1983.

5. The defendants have been selling its pharmaceuticals products since its incorporation. The annual sales figures were Rs.8,81,291.12(Eight Lacs Eighty One Thousand Two Hundred Ninety One and Paise Twelve) in the year 1987-1988. In the year 2005-2006 sales figures have reached 3,05,25,118.82 (Three Crore Five Lacs Twenty Five Thousand One Hundred Eighteen and Paise Eighty Two. Clearly, the plaintiff has not objected to the use of word "Raymond" in the name of name of the defendant company since the year 1983 except when they issued

a cease and desist notice dated 3rd October, 2005. Thus, the plaintiff in this suit claim that the defendants are infringing their registered trade mark by using word "Raymond".

6. The defendants' case is that the word "Raymond" is a common word. It is a Christian name, and quite common name. The word "Raymond" itself means "mighty protection" in the English language. They submitted that they have accordingly adopted the word "Raymond" in their pharmaceutical products without any intention of causing any damage to the plaintiff's name or taking any unfair advantage of the plaintiff's name. It is their contention that they have adopted the name without any reference to the plaintiff's name and the adoption and use is entirely honest and concurrent in relation to their goods which have no relation whatsoever to the plaintiff's goods. The goods are not in competition in any way with the goods of the plaintiff.

7. In the first place, it is necessary to examine whether the word "Raymond" is common and therefore available for adoption without reference

to the plaintiff's trade mark. The Reader's Digest Great Encyclopaedic Dictionary describes the word "Raymond" as under:-

> "Raymond (masc.). Ultimately from Gmc *Raginmund*, 'mighty protection'."

The defendants have also submitted a list of about 30 cases whose name include word "Raymond". Interestingly, according to the defendants, a search for the word 'Raymond' on the web in the site "Google" has displayed results of about 83,08,00,000 (Eighty Three Crore Eight Lacs) in 0.05 seconds. The defendants have also relied on about 20 names which appear in the MTNL Telephone Directory. From the above, it can be safely inferred that word "Raymond" is common enough and was available for adoption without reference to the plaintiff's mark.

8. There is no doubt that even if a name or a word is common, if it is registered as a trade mark its owner can bring an action for the infringement of the trade mark in accordance law. The action can however succeed only where it can be demonstrated that the defendants' use of the trade mark constitutes an infringement as contemplated by the

Trade Marks Act, 1999(hereinafter referred to as the Act.).

9. Section 28 of the Act reads as follows.

"**28. Rights conferred by registration**.-

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

2) The exclusive right to the use of a trade mark given under sub-section (1) shall be subject to any conditions and limitations to which the registration is subject.

(3) Where two or more persons are registered proprietors of trade marks, which are identical with or nearly resemble each other, the exclusive right to the use of any of those trade marks shall not(except so far as their respective rights are subject to any conditions or limitations entered on the

> register) be deemed to have been acquired by any one of those persons as against any other of those persons merely by registration of the trade marks but each of those persons has otherwise the same rights as against other persons(not being registered users using by way of permitted use) as he would have if he were the sole registered proprietor".

10. This section confers exclusive right to use of trade mark on its registered proprietor "in relation to the goods or services in respect of which the trade mark is registered" and not others.

11. Section 29 of the Act deals with what constitutes an infringement of registered trade mark. That section reads as follows:-

> **"29. Infringement of registered trade marks.**
>
> (1) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is

registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

(2) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, mark which because of-

(a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

(b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

(c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark,

is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trade mark.

(3) In any case falling under clause

(c) of sub-section (2), the court shall presume that it is likely to cause confusion on the part of the public.

(4) A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which-

(a) is identical with or similar to the registered trade mark; and

(b) is used in relation to goods or services which are not similar to those for which the trade mark is registered; and

(c) the registered trade mark has a reputation in India and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered trade mark.

(5) A registered trade mark is infringed by a person if he uses such registered trade mark, as his trade name or part of his trade name, or name of his business concern or part of the name, of his business concern dealing in goods or services in respect of which the trade

mark is registered.

(6) For the purposes of this section, a person uses a registered mark, if, in particular he-

(a) affixes it to goods or the packaging thereof;

(b) offers or exposes goods for sale, puts them on the market, or stocks them for those purposes under the registered trade mark, or offers or supplies services under the registered trade mark;

(c) imports or exports goods under the mark; or

(d) uses the registered trade mark on business papers or in advertising.

(7) A registered trade mark is infringed by a person who applies such registered trade mark to a material intended to be used for labelling or packaging goods; as a business paper, or for advertising goods or services, provided such person, when he applied the mark, knew or had reason to believe that the application of the mark was not duly authorized by the proprietor or a licensee.

(8) A registered trade mark is infringed by any advertising of that trade mark if such advertising-

(a) takes unfair advantage of and is contrary to honest practices in industrial or commercial matters; or

(b) is detrimental to its distinctive character; or

(c) is against the reputation of the trade mark.

(9) Where the distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words as well as by their visual representation and reference in this section to the use of a mark shall be construed accordingly".

12. In brief, Section 29 of the Act makes the following provisions. It provides that a trade mark is infringed when a person who is not its registered proprietor uses it in relation to the goods and services in respect of which trade mark is registered. It contemplates infringement to be that which causes confusion on the part of public with

the registered trade mark.(Sub Section (2) of the Act). It also contemplates infringement where the trade mark is not used in relation to the goods and services similar to those for which it is registered when the mark that is complained of is identical with or similar to the trade mark and its use is without due cause and takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark. The mode or manner of use by which a registered trade mark may be part of its business concern dealing goods or services in respect of trade mark is registered. The infringing use may involve affixing of trade mark on the goods or packaging or if he uses it for the purpose of sale or marketing, stocking or supplies under the trade mark or imports or exports or advertising. Lastly, where distinctive elements of a registered trade mark consist of or include words, the trade mark may be infringed by the spoken use of those words or by the written use of the word.

13. In this case, it is necessary to consider whether the defendants' use of the word "Raymond" in its corporate name constitutes infringement of the

registered trade mark of the plaintiff. Clearly, the use by the defendants is not in relation to the goods or services in respect of which the plaintiff's trade mark is registered since the defendants do not use it on any of the defendants products. The use is not in such a manner as is likely to be taken as being used as a trade mark. (Sub-section (1). Similarly since the use by the defendants is as part of corporate name "Raymond Pharmaceuticals Private Limited, there appears no likelihood that such use may cause confusion on the part of public which has association with the registered trade mark. In other words no member of public who associates word "Raymond" with the plaintiff's trade mark in relation to the wearing apparels is likely to think that word "Raymond Pharmaceuticals Private Limited" appearing on letter head or spoken elsewhere refers to the plaintiff's trade mark(Sub Section (2).

14. Section (4) provides that registered trade mark may be infringed if the conditions therein are cumulatively present i.e. if the mark is identical with or similar to the registered trade mark and is

used in relation to dissimilar goods and it has reputation in India and "the use of the mark without due cause takes unfair advantage of or its detrimental to, to the distinctive character or repute of the registered trade mark".

Assuming that a part of entire name used by the defendants is identical with the plaintiff's trade mark and may constitute an infringement even if it is not used in relation to the goods and services similar to the those of the plaintiff's, still it does not constitute an infringement unless its use by the defendants is shown to be "without due cause" and "taking unfair advantage" of or is detrimental to the distinctive character or repute of the registered trade mark. So far as the last contention is concerned, the word "Raymond" appears quite appropriate for a company which manufactures medicinal products and one can not imagine how the defendants can, by using the mark for its corporate name take unfair advantage of such use in its products from registered trade mark of the plaintiff which is used for entirely different products. In fact, from the point of view of a consumer, there is

no association between the two products either having regard to the need for products shop in which they are available for their use. For the same reason one can not imagine how the use by the defendants of the trade mark can be detrimental to the plaintiff's corporate or repute of the registered trade mark.

15. The learned counsel for the plaintiff relied on the decision of single Judge of this court in the case of **Kirloskar Diesel Recon Pvt. Ltd v/s. Kirloskar Proprietary Ltd reported in AIR 1996 BOMBAY 149.** It clearly appears that the decision is not applicable to the present case at all since in that case there was some chance of overlap in the business activities. In that case it was observed that "business activities of the Respondents vary from pin to piano as borne out from the object clauses of the Memorandum of Association of the Respondents. The appellants have still to commence their business activities but as mentioned in the Memorandum of Association of 1st Appellant in each appeal, some of the object clauses therein over lap

with the activities of Respondents and more particularly of Respondents Nos.6 and 7".

Here in this matter at hand, there is no over lap whatsoever of the business activities of the two parties. However, the Plaintiff has relied upon the decision in case of **Daimler Benz Aktiegesellschaft V/s. Hybo Hindustan reported in AIR 1994 DELHI 239**. Facts of that case are also dissimilar with those facts here. In that case the defendants who dealt in underwear had simulated symbol of three pointed star of "Mercedes Benz" car by showing the figure of a man with his legs spread in a ring. The close of the defendants symbol association to the three pointed star which was mimicked by the defendants alongwith use of word "Raymond" is rather exclusively led the Delhi High Court grant an injunction.

Here in this case, there is neither any similarity nor symbol nor the word like "Benz" which leads to an unfair association with the plaintiff's mark. Moreover, there does not appear any attempt on the part of the defendants to derive any unfair

advantage or cause any damage to the plaintiff's mark.

16. The learned counsel for the plaintiff also relied on ad-interim order passed by this court in case of **Raymond Limited V/s. Raymond Estates Pvt. Ltd.** I have however, found from the copy of order dated 25th September, 2006 in notice of motion No.3261 of 2006 in suit No.2723 of 2006 that the defendants propose to use plaintiff's name in respect of goods and services which include cloth/textile goods. Such is not case here.

17. In this view of matter, I do not see any merit in the notice of motion. Notice of motion is hereby dismissed.

(S.A.BOBDE, J.)